IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12889 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESH J CHHATBAR PRESIDENT

Versus

CHAIRMAN, ANJAR AREA DEVELOPMENT AUTHORITY

Appearance:

1. Special Civil Application No. 12889 of 2003

MR NALIN K THAKKER for Petitioner.

MR NIKHILESH J SHAH for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

Mr. SN Shelat, Advocate General with Ms. Maithili Mehta, AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 24/03/2005

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner has prayed for an appropriate writ, direction or order directing the

respondent Area Development Authority and/or the State Government to grant the land according to two alternative suggestions, i.e., (1) to grant Final Plot No. 404/2 in the land shown in blue colour and Final Plot shown in yellow colour on one side of the proposed internal road and (2) to grant about 60 sq.mtrs. of land for temple in Final Plot No. 404/1 as per sketch plan at Annexure 'A' or in the alternative to grant 800 sq.mtrs. of land from the Government waste land of 386.62 sq.mtrs., near main S.T. Bus Stand in which 12 types of commercial shopping centres are constructed since about 5 years in Final Plot No. 404/2 and 60 sq.mtrs. of land from the temple land in Final Plot No. 404/1, i.e., in all 1246.62 sq.mtrs. of land.

2. The petitioner trust was having properties situate in City Survey No. 3126 admeasuring 2058 sq.mtrs. and there was one Samajwadi, one Temple of Mankeshwar Mahadev, and 12 shops of shopping centres in City Survey No. 3126. There was a devastating Earthquake on 26th January 2001 due to which people were buried in the debris of buildings and of narrow streets and most of the buildings in the town of Anjar came to be damaged badly and therefore the Government has decided to constitute a Special Planner for the worst affected cities of Bhuj, Anjar and Rapar under the provisions of Gujarat Town Planning and Urban Development Act, 1976 (hereinafter be referred to as "the Act"). Town Planning Scheme No.2 came to be published and after following necessary procedure as required under the provisions of the Act City Survey No. 3126 belonging to the petitioner was given Final Plot No. 404 and on reconstitution under the finalised Town Planning Scheme against the holding of 2058 sq.mtrs. of land the petitioner came to be allotted Final Plot No. 404/2 admeasuring 1217.11 sq.mtrs. and Final Plot No. 404/1 admeasuring 32.05 sq.mtrs. in all 1249.16 sq.mtrs. of land. It is required to be noted that from the land bearing City Survey No. 3126 a six metres wide town planning road came to be proposed and remaining land has been given to other 11 persons under the finalised Town Planning Scheme by way of different final plots. It is the case of the petitioner that instead of allotting Final Plot No. 404/2 to the petitioner at some other place the same should have been allotted to the petitioner from the land bearing City Survey No. 3126 itself which was originally owned and occupied by the petitioner Trust. It is the case of the petitioner that instead of allotting land from the land bearing City Survey No. 3126 to other 11 persons under the finalised Town Planning Scheme the petitioner Trust should have been allotted the final plot from the

property bearing City Survey No. 3126 originally owned and occupied by the petitioner trust. It is the case of the petitioner that the petitioner trust submitted objections against the draft Town Planning Scheme and requested not to cover any land of the trust in the Town Planning Scheme and in the alternative grant land in another developed area. The petitioner also suggested to allot the land near the Temple of the trust instead of allotting the said land of the trust to other persons and inspite of that the petitioner Trust came to be served with the notice dated 21.10.2002/13.11.2002 under Section 68 of the Act read with Rule 33 of the Rules and the petitioner Trust was directed to hand over possession of the land belonging to the Trust. It is the case of the petitioner Trust that several representations were made by various social organisations which are not considered by the appropriate authority. It is the contention on behalf of the petitioner Trust that 1144.47 sq.mtrs. of land is allotted to other 11 persons by way of different final plots from the land bearing property No. 3126 originally owned and possessed by the petitioner Trust and the petitioner Trust is allotted 1249.16 sq.mtrs. of land being Final Plot No. 404/2 in such a manner that it is not possible for the petitioner Trust to construct Samajwadi. Therefore the petitioner has suggested and prayed that as there is a proposal to construct six metres wide internal road across the land of the Trust from the property bearing City Survey No. 3126 as shown in the Sketch which is at Annexure 'K' the additional land of 366.84 sq.mtrs. proposed to be granted to the trust may not be granted and the land shown in yellow colour with the land shown in green colour on one side of the road may be granted to the petitioner considering Section 81 of the Act so that the Trust can construct Samajwadi on its own land. The land of the Temple on Final Plot No. 404/1 admeasuring 32.05 sq.mtrs., is proposed to be granted to the Trust and some land being required around the Temple it is suggested to grant the land admeasuring 60 sq.mtrs., including area of Temple in Final Plot No. 404/1. In the alternative, it is also suggested to grant land in a developed area of Anjar city, i.e., either near main S.T. Bus Stand and from the land bearing City Survey No. 3126 on which 12 shops of commercial shopping centres constructed remained as such since about 5 years in Final Plot No. 404/2. Therefore it is requested to allow the present Special Civil Application and to direct the respondents to grant the land according to the suggestions which are stated hereinabove.

3. Shri Nalin Thakkar, learned advocate appearing on

behalf of the petitioner had vehemently submitted that instead of allotting 9 different final plots to other 9 persons from the land bearing City Survey No. 3126, i.e., the property originally owned and possessed by the petitioner Trust, after deducting the land which is required for six metres wide road the petitioner Trust should have been allotted final plot from the land/property bearing City Survey No. 3126 itself rather than allotting final plot No. 404/2 at other place. For the aforesaid prayer, Shri Thakkar has relied upon Section 81 of the Act. It is also submitted that the petitioner trust also requires some land near the Temple, i.e., land bearing Final Plot No. 404/1. It is further submitted that the petitioner should be allotted final plot in the developed area as under the scheme the 12 shops constructed by the petitioner Trust would be affected as they will cease to exist under the town planning scheme and therefore requested to allow the present Special Civil Application.

4. In response to the notice issued by this Court, Shri S.N. Shelat, learned Advocate General appears with Ms. Maithili Mehta, learned AGP on behalf of the State Government and Shri Nikhilesh Shah, learned advocate appears on behalf of Area Development Authority. An affidavit is filed on behalf of the Area Development Authority. It is submitted that after following due procedure which is required to be followed under the provisions of the Act as well as the Rules, the preliminary Town Planning Scheme No.2 has become final; it has been sanctioned by the State Government; it has now become part of the Act; considering the provisions of Section 67 of the Act all the lands required by the appropriate authority shall vest absolutely in the appropriate authority free from all encumbrances and all the rights relating to original plots which have been reconstituted in the final plots are required to be determined by the Town Planning Officer; on finalisation of the town planning scheme the petitioner trust has no right, title or interest in the land bearing City Survey No. 3126 originally owned and possessed by the trust; and therefore it is not open for the petitioner trust to challenge the Town Planning Scheme. It is further submitted that there has been vast destruction of human life and property in the area due to devastating Earthquake on 26.1.2001 due to which people were buried in the debris of buildings and of narrow streets. After the Earthquake the Government and NGOs had immediately started rescue operation, but due to narrow streets the Government machinery could not reach through the streets to work in the city and start rescue operation in time as

a result whereof many people lost their lives and therefore the Government had decided to constitute a Special Planning Committee for the walled areas of Bhuj, Anjar, Bachhau and Rapar under the Act. It is further submitted that under the provisions of the Act Anjar Area Development Authority (hereinafter referred to as "AADA") was constituted. It is further submitted that as required under Section 41(1) of the Act, AADA consulted the Chief Town Planner vide letter dated 4.2.2002 before declaration of the intention and after getting necessary reply by resolution dated 3.5.2002 the declaration of intention to prepare Town Planning Scheme No. 1 to 4 was made and the said declaration of intention was published in Gujarat Government Extraordinary Gazette dated 4.5.2002 as required under Rule 16(1) of the Rules of 1979. It is further submitted that all the formalities were completed as required under Rule 16(1) and 16(2) of the Rules of 1979. It is further submitted that as required under Section 41(2) of the Act a copy of the advertisement exhibiting declaration of intention was despatched to the State Government along with the plan as referred to in the said Section. It is further submitted that individual notices as well as public notices were given for owners' meeting as per Rule 17 and accordingly the owners' meeting was held on 23.5.2002. It is also further submitted that tentative proposals of draft Town Planning Scheme were explained and suggestions and objections were invited from the landowners. It is further submitted that after considering the suggestions and objections the plan was modified and accordingly vide Resolution dated 14.6.2002 draft Town Planning Scheme was made by AADA as required under Section 42(1) of the Act. It is further submitted that the draft Town Planning Scheme was published as required under Section 42(1) of the Act read with Rule 18(1) of the Rules and wide publicity was given as required under the Act and the Rules. It is further submitted that thereafter as required under Section 48(1), the draft Town Planning Scheme was submitted along with modification and suggestions were received by AADA for sanction by the Government and the draft Town Planning Scheme came to be sanctioned by the State Government vide Notification dated 17.7.2002. It is further submitted that as required under Section 50 of the Act Town Planning Officer was appointed by the State Government to finalise the sanctioned draft Town Planning Scheme and to prepare and submit preliminary Town Planning Scheme to the State Government for sanction. It is further submitted that after following necessary procedure objections and suggestions were invited and on consideration of the same the State Government has accorded sanction of the

preliminary town planning scheme by notification dated 25.1.2003 and the Town Planning Scheme has come into force since 21.1.2003. It is further submitted that as contemplated under Section 67 of the Act all lands required by AADA vest absolutely in AADA free from all encumbrances with effect from 21.1.2003 and hence notice under Section 67 of the Act for vesting of the land in AADA was given to the petitioner. It is further submitted that notice was issued to the petitioner for vacating the land and handing over possession of the land to AADA as required under Section 68 of the Act and Rules 33(1)(a) of the Rules. It is further submitted that so far as petitioner's plot bearing City Survey No. 3126 is concerned, it came to be numbered as Original Plot No. 404 which has been reconstituted into two Final Plots bearing Nos. 404/2 and 404/1. It is further submitted that original plot was admeasuring 2058 sq.mtrs and final plot allotted to the petitioner trust is admeasuring 1249.16 sq.mtrs. Thus the deduction is 30 per cent which is as per the guidelines. It is further submitted that to save the Temple which was originally there in the City Survey No. 3126, final plot No. 404/1 admeasuring 32.05 sq.mtrs. is allotted to the petitioner taking into consideration religious feelings of the petitioner. It is further submitted that the land of original plot No. 404 is required for laying two 6 metres wide road, i.e., public purpose. It is further submitted that ample opportunity was given to the petitioner trust to make suggestions and objections and after considering the suggestions and objections the aforesaid final plots are allotted to the petitioner trust. It is submitted that some portion of the land of original plot No. 404, i.e., land bearing City Survey No. 3126 after deducting area for two 6 metres wide road is allotted to 11 different persons by way of 11 different final plots, the particulars of which are as under;

Sr. No.	Name of owners of Plots.	Final Plot Number	Final Plot Area in Sq.mtr.
(A)			
1.	Vinodkumar Hansraj Shah, Vipulkumar Vinodkumar Shah.	234	60.23
2.	Jadauben Maganlal Sanghavi.	237	56.02

3. Abdulgafur Sangini 775 151.49

4. Jayantilal Jivabhai 407/A 136.73
Prajapati.

5. Sushilaben Shobhagchand 186 30.77

6. Sushilaben Naranji 195 46.81

7. Anjardaudi Vora Jamat 252 57.43
Male Masjid.

8. Vinod Chunilal 78 108.20

9. Bhanuben Ratansi 80 64.79
wd/o Vora Chunilal
Damodar. _____

Total Cut off Plot 712.47

(B)

1. Cut off proposed
internal road. 320.00

(C)

Reserve Plot R-2+R-34. 112.00
_____

Total Sq. Mtrs. 1144.47
_____

It is submitted that if the prayer of the petitioner to allot Final Plot to the petitioner from the land bearing City Survey No. 3126 is granted then those 11 persons would be affected who are not parties to the present Special Civil Application and therefore requested to dismiss the present Special Civil Application. The learned advocates appearing on behalf of the respondents have further submitted that under the provisions of the Town Planning Act and the Rules it is for the appropriate authority and the Town Planning Officer to prepare plans and to consider which land/final plot is to be allotted to whom taking into consideration various aspects and it is not for the individuals to pray for a particular final plot from a particular land. It is submitted that if the same is required to be considered then there will not be any proper planning and the Town Planning Scheme can

never be implemented and therefore it is requested to dismiss the present Special Civil Application.

5. An affidavit-in-reply is also filed on behalf of the State Government. It is submitted that the land under reference constituting City Survey No. 3126 is denoted as original plot No. 404 admeasuring 2058 sq.mtrs. is included in the draft as well as preliminary Town Planning Scheme No.2 of Anjar and in lieu of the said original plot the petitioner is allotted 1247.19 sq.mtrs. It is further submitted that original plot No. 404 is required for the purpose of laying down 6 metres wide road. It is further submitted that on considering the objections, suggestions, site situation etc., the Town Planning Officer has declared the preliminary scheme on 26th December 2002 and as per the sanctioned preliminary scheme in lieu of the said original plot No. 404 admeasuring 2058 sq.mtrs., reconstituted Final Plots No. 404/1 and 404/2 admeasuring 32.05 sq.mtrs. and 1217.11 sq.mtrs. are allotted to the petitioners in the preliminary scheme. It is submitted that as per the request made by the petitioner to the Town Planning Officer dated 12th September 2002 and 9th October 2002, final plot No. 404/1 is allotted to the petitioner in the preliminary scheme and final plot No. 404/2 is allotted to the petitioner in the preliminary scheme at the same place as was allotted in the draft Town Planning Scheme. It is further submitted that the petitioner has given a written consent to the Town Planning Officer dated 13th November 2002 regarding the proposal of the said preliminary scheme and therefore it is now not open for the petitioner to pray contrary to the same, and requested to dismiss the present Special Civil Application.

6. Heard the learned advocates appearing on behalf of the parties. The petitioner Trust was owner of the property bearing City Survey No. 3126 admeasuring 2058 sq.mtrs. of land. The same was given Original Plot No. 404 in the draft Town Planning Scheme. Under the Town Planning Scheme, a six metres wide road is passing through the property bearing City Survey No. 3126 and that there was a Temple also. To save the existing Temple the petitioner Trust is allotted the Final Plot No. 404/1 admeasuring 32.05 sq.mtrs. of land which is from the original property bearing City Survey No. 3126 and 1217.11 sq.mtrs. of land is allotted to the petitioner Trust against their original holding being Final Plot No. 404/2 and after deducting 32.05 sq.mtrs. of land which is a Temple and which has been given Final Plot No. 404/1 the remaining land from the land bearing City Survey No.

3126 is allotted to other 9 persons by way of 9 different final plots as per requirements, and considering the objections, suggestions and site situation, the contention on behalf of the petitioner to allot Final Plot No. 404/2 to him from the land bearing City Survey No. 3126, Original Plot No. 404 cannot be accepted and granted. It is ultimately for the appropriate authority and the Town Planning Officer to prepare the plan as per their requirements and considering the Town Planning Scheme it is ultimately for the appropriate authority and the Town Planning Officer to decide as to which final plot is to be allotted to whom and from which land. It is required to be noted that the petitioner trust has been given ample opportunity to represent their case and after considering the suggestions and objections and the site situation the appropriate authority and the Town Planning Officer has allotted final plot No. 404/2 to the petitioner trust at some other place and 9 different persons are allotted 9 different final plots from the land bearing City Survey No. 3126 original plot No. 404. It is also required to be noted that there is a six metres wide road passing through the property bearing City Survey No. 3126 original plot No. 404 and even considering the religious feelings of the petitioner the petitioner trust has been allotted final plot No. 404/1 and thereby the Temple is saved. It is also required to be noted that the Town Planning Scheme, having become final, has become part of the Act. As per Section 67 of the Act, all lands which are required by the Area Development Authority for the purpose of implementation of scheme vest absolutely in the Area Development Authority free from all encumbrances and therefore after sanctioning of the Town Planning Scheme with effect from 21.1.2003 the petitioner trust has no right, title or interest in the land bearing City Survey No. 3126 original plot No. 404 except the land which is allotted to the petitioner Trust. Under the circumstances, it is not open for the petitioner to challenge the same. It is also required to be noted that in the present Special Civil Application, the petitioner has not challenged the Town Planning Scheme at all. Once the Town Planning Scheme has become final and it is not challenged, necessary consequences would follow and the petitioner is required to hand over peaceful and vacant possession of the land which is occupied by them to the Town Planning Officer and/or the Area Development Authority and the petitioner cannot be permitted to retain the possession which otherwise the petitioner is not entitled to retain under the Town Planning Scheme. The prayer and/or the suggestions of the petitioner therefore cannot be granted. If request of this type is entertained from anybody whereby land of final plot is allotted as per

wish and desire which varies from person to person, then no town planning scheme can be implemented. Under the provisions of the Act more particularly under Section 40 of the Act, it is for the appropriate authority to make the scheme for the developed area or any part thereof and in view of this proposition of law also the prayer of the petitioner cannot be granted.

7. So far as the submission made on behalf of the petitioner to allot the final plot from the land which was originally owned and occupied by the petitioner, relying upon Section 81 of the Act, is concerned, the same is absolutely misconceived, as Section 81 of the Act has no applicability at all to the facts of the present case. Section 81 of the Act deals with the rights, such as tenancy rights etc., of a person in a Original Plot and which require transfer on reconstitution. As per Section 81 of the Act, any right in a original plot, which in the opinion of the Town Planning Officer is capable of being transferred wholly or in part, without prejudice to the making of a Town Planning Scheme, to a Final Plot, shall be so transferred and any right in a original plot, which in the opinion of the Town Planning Officer is not capable of being so transferred, shall be extinguished, meaning thereby if an original plot is required under a Town Planning Scheme and some other final plot is allotted against the same, then in that case the tenancy right shall be transferred to such final plot. Under the circumstances, the reliance placed upon Section 81 with regard to his submission to allot Final Plot to the petitioner from the Original Plot itself is absolutely misconceived as the provisions of Section 81 of the Act are not applicable at all to the facts of the present case.

8. There is another reason also for dismissal of the present Special Civil Application. In fact, the petitioner has already given a written consent to the Town Planning Officer on 13th November 2002 regarding the proposal of the preliminary scheme and the petitioner has agreed to take Final Plot No. 404/1 and 404/2 as per the reconstituted draft as well as preliminary Town Planning Scheme and therefore it is now not open for the petitioner to challenge the same. It is also required to be noted that as stated hereinabove some portion of the land from the Original Plot is allotted to some 9 persons by way of 9 different plots, and if the prayer of the petitioner is granted to allot final plot to the petitioner from the original plot, then those 9 persons who are not party to the present Special Civil Application are likely to be affected. Therefore also the prayer of the petitioner

cannot be granted.

9. For the reasons stated hereinabove, there being no substance in the present Special Civil Application the same deserves dismissal. It is dismissed accordingly. Notice is discharged. Ad-interim relief stands vacated forthwith.

{ M.R. Shah, J. }

rmr.